



Incarceration of Youth with Mental Health Disorders in New Mexico

Prepared for Sen. Jeff Bingaman, Rep. Tom Udall, and Rep. Henry A. Waxman

**Minority Staff
Special Investigations Division
Committee on Government Reform
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EXECUTIVE SUMMARY

Families, clinicians, and advocates have called attention to a crisis in access to mental health services in New Mexico, a state with the third-highest youth suicide rate in the country. At the request of Sen. Jeff Bingaman, Rep. Tom Udall, and Rep. Henry A. Waxman, this report looks at one aspect of this problem. It examines what happens to youth with mental health disorders who enter juvenile detention centers. It finds that these youth often remain incarcerated for extended periods of time solely because there is no place for them to go to receive treatment.

Serious mental health problems afflict at least one in twenty Americans ages 9 to 17. While effective treatment for these conditions exists, those youth without access to care are at high risk for entering the criminal justice system. It has been estimated that at least one in three youth in U.S. jails and detention centers have serious mental health problems, such as depression and schizophrenia.

In New Mexico, juveniles with mental health disorders who stand accused of crimes are initially held in county-run juvenile detention centers. Those convicted and sentenced to prison are transferred to state-run juvenile facilities. Many youth with mental health problems, however, are not sentenced to prison. Instead, New Mexico courts commonly order that these youth be discharged from detention centers so that they can receive appropriate mental health treatment.

This report examines what actually happens to these youth in need of mental health care when they are ready to be sent from juvenile detention centers to treatment facilities. The report finds that these youth are frequently kept incarcerated at the detention centers because there are no suitable treatment services available. Based on a survey of administrators from all 14 county juvenile detention centers in New Mexico, the report finds:

- **Thirteen of the 14 New Mexico detention centers incarcerated youth for extended periods solely to wait for residential treatment, inpatient services, or outpatient care in 2001.**
- **Approximately one in seven youth in New Mexico detention centers is incarcerated because mental health care is not available.** Administrators reported that 14.2% of juveniles (39 of 274) were in their centers because of delays in accessing treatment. As one administrator described it, “detention centers in New Mexico . . . have become the largest mental health institutions in the state.”
- **From January to December 2001, an estimated 718 New Mexico youth were collectively incarcerated for 31.3 years just to wait for a treatment opening.** The average period of extended incarceration is over two weeks, and many youth are held for significantly longer periods. One administrator said: “We’ve kept a young fellow 167 days while they looked for a place to put him. He didn’t need to be in a jail. He needed treatment capabilities and he sat here that long waiting.”
- **Detention center administrators are frustrated by shortages of mental health services.** According to one administrator, this is “the biggest problem there is. There’s nowhere to put these kids.” Another administrator commented: “If [youth have] got a

mental health problem, they really don't belong here. They need treatment. Most detention centers supply basic services. The faster you get them in and the faster you get them out the better it is for their treatment." Another administrator said: "They're here forever. It is extremely frustrating not only for us but also extremely [frustrating] for the kids. The kids want to move on and go to programs and get the help and do something instead of stay here. It's a hard situation all the way around."

- **A major cause of the extended incarceration appears to be the New Mexico Medicaid program's failure to provide adequate mental health services.** Responsible for 160,000 children and adolescents, the New Mexico Medicaid program is supposed to provide mental health care to low-income youth. The program, however, has experienced multiple problems since enrollees were required in 1997 to join a managed care system called *Salud!*. Although many of the youth in detention centers are covered by Medicaid, *Salud!* appears unable to provide the services they need to avoid unnecessary incarceration. One administrator said, "We definitely need more places to help treat these kids. They need the help, and we seem to be running out of beds. We need to cut back some of the red tape on the Medicaid [program] to get them the treatment that they need. Because jail is not a place for them. We can't treat them here."

I. INTRODUCTION

The U.S. Surgeon General has determined that more than one in twenty American youth ages 9 to 17 suffers from a serious mental health problem, such as major depression, a disruptive disorder, bipolar disorder, or schizophrenia.¹ Effective therapy exists to treat all of these conditions.² Unfortunately, in some areas of the United States, access to mental health services is limited.³ Families, clinicians, and advocates have called attention to a severe shortage in access to mental health care in New Mexico, a state with the third-highest youth suicide rate in the country.⁴

Where treatment is scarce, mentally ill youth are at high risk for entering the criminal justice system. It is well documented that many individuals with untreated mental health problems are arrested, often on minor charges.⁵ Studies have found that more than one in three youth in U.S. detention centers and jails have a mental health disorder.⁶

In New Mexico, juveniles with mental health disorders who stand accused of crimes are initially held in county-run juvenile detention centers. Those convicted and sentenced to prison are transferred to state-run juvenile facilities. Many youth with mental health problems, however, are not sentenced to prison. Instead, New Mexico courts commonly order that these youth be discharged from detention centers so that they can receive appropriate mental health treatment at residential centers or psychiatric hospitals or through outpatient services in their communities. These orders are sometimes the result of contested adjudications. Other times, they are the product of voluntary plea agreements between the youth and the state. The orders typically

¹Department of Health and Human Services, *Mental Health: A Report of the Surgeon General*, (1999).

²Ibid.

³*Children Trapped by Mental Illness*, New York Times (July 9, 2001).

⁴*New Mexico High in Youth Suicides*, Santa Fe New Mexican (Jan. 2, 2002).

⁵See, e.g., *When the Treatment Is Punishment; Lack of Options Keeps Mentally Disturbed Youth Locked Up*, Pittsburgh Post-Gazette (July 15, 2001); *Mentally Ill Need Care, Find Prison; Without Treatment, Many Cycle In and Out of Jail*, Washington Post (Nov. 25, 2001); E. Fuller Torrey, Joan Stieber, Ron Ezekiel, et al., *Criminalizing the Seriously Mentally Ill: The Abuse of Jails as Mental Hospitals* (1992).

⁶See, e.g., S. Pliszka, J. Sherman, M. Barrow, S. Irick, *Affective Disorder in Juvenile Offenders: A Preliminary Study*, American Journal of Psychiatry (January 2000); C. Duclos, J. Beals, D. Novins, C. Martin, C. Jewett, S. Manson, *Prevalence of Common Psychiatric Disorders Among American Indian Adolescent Detainees*, Journal of the American Academy of Child and Adolescent Psychiatry (August 1998); *When the Treatment Is Punishment; Lack of Options Keeps Mentally Disturbed Youth Locked Up*, Pittsburgh Post-Gazette (July 15, 2001).

provide that the youth must remain in custody at the detention center until suitable treatment becomes available.

There have been allegations that shortages of treatment services have caused many youth in New Mexico with mental health problems to remain incarcerated in detention centers for extended periods. At the request of Sen. Jeff Bingaman, Rep. Tom Udall, and Rep. Henry A. Waxman, this report investigates these allegations. It is the first study of what actually happens to youth in New Mexico with mental health problems when they are ready to leave detention centers for treatment.

II. METHODOLOGY

For this report, the Special Investigations Division interviewed one administrator (director, manager, or supervisor) from each of the 14 county juvenile detention centers in New Mexico between December 3, 2001, and December 19, 2001. The list of juvenile detention centers was obtained from the Criminal and Juvenile Justice Coordinating Council of New Mexico.

The structured interview began with several questions related to the size and occupancy of the detention center. The interviewer then asked:

Does your facility ever hold juveniles who stay extra time solely because they are waiting for additional mental health services, in the form of a psychiatric hospital bed, residential placement, or outpatient services?

Those administrators answering “yes” to this question were then prompted to provide a range of ages of the youth involved and the frequency and duration of such events (including estimates if exact figures were not available). The administrators were also asked whether these juveniles were often Medicaid enrollees, and they were offered an opportunity to make additional comments. The administrators gave consent for their responses to be included in this report without identification of specific detention centers.

The Special Investigations Division also reviewed government documents, interviewed clinicians, families, and advocates, and examined news reports to analyze recent state and federal actions affecting the availability of mental health services.

III. RESULTS

A. New Mexico Juvenile Detention Centers Commonly Hold Youth Because Mental Health Services Are Not Available

Thirteen of the 14 juvenile detention centers in New Mexico (93%) held youth extra time solely to wait for mental health services in 2001, according to their administrators. At the time each detention center was surveyed, 274 total youth were in custody. Of those, 39 juveniles, or 14.2%, were incarcerated solely because mental health treatment was not available.

While none of the administrators reported keeping track of exactly how many youth experienced this extended incarceration over time, 12 were able to provide estimates. In total, these administrators estimated that from January to December 2001, 718 youth were held in detention centers because of the lack of mental health services. Collectively, these juveniles spent an estimated 11,410 extra days incarcerated in 2001. This is the equivalent of 31.3 years of time. The average period of extended incarceration was 15.8 days.

In some instances, youth were held for many months in detention centers for no reason other than the lack of available services. One administrator reported that a youth was incarcerated for eight extra months while waiting for a residential placement. Another administrator said:

We've kept a young fellow 167 days while they looked for a place to put him. He didn't need to be in a jail. He needed treatment capabilities and he sat here that long waiting. Our jail is small, there's not lots of freedom, there are no programs. He's really been restricted for 6 months. At their stage of life, 6 months is a long time. A lot of good could have happened.

Seven administrators reported extended incarceration of youth as young as 13 years old.

B. A Shortage of Several Types of Mental Health Services Causes Youth Who Need Treatment to Remain Incarcerated

The most appropriate setting for treatment of youth with mental health disorders depends upon the severity of the disease. Youth at the highest risk for self-injury require inpatient psychiatric hospitalization. Those requiring close monitoring by professionals can thrive in group homes or other residential placements. Finally, some youth can go home and live with their families if intensive community-based services are provided.

In New Mexico, detention center administrators reported that deficiencies in all three levels of care – inpatient, residential, and community – caused youth to spend extended periods of time incarcerated. Youth in 12 detention centers waited extra time for an opening in a group home or other residential placement. One administrator commented:

The wrestling match comes when we try to get residential treatment. So much becomes a personality thing, do I know this doctor or that doctor or can I help twist this arm.

In 11 detention centers, youth waited for an opening in a psychiatric hospital. In five detention centers, youth waited for suitable outpatient mental health services.

The problem of access to appropriate mental health services is so great that one administrator said: “detention centers in New Mexico . . . have become the largest mental health institutions in the state.”

C. Detention Center Administrators Report Frustration with Unnecessary Incarceration

In their comments, administrators reported frustration with holding youth with serious mental illness in detention centers instead of in facilities that can provide necessary treatment. For example, one administrator described this problem as “the biggest problem there is. There’s nowhere to put the kids and those places [that do exist] are so full. We wait until we even find a place out of state.”

Another administrator reported:

If [youth have] got a mental health problem, they really don’t belong here. They need treatment. Most detention centers supply basic services. The faster you get them in and the faster you get them out the better it is for their treatment. . . . I’m not a mental health facility and I think something ought to be done to expedite the placement.

A third administrator commented:

My officers are having to deal with these kids who are really in need of treatment. . . . My concern is not the fact they have to stay here, but the damage they can do to themselves or to staff. My concern is the well-being of the staff and the inmates.

A fourth administrator said:

They’re here forever. It is extremely frustrating not only for us but also extremely [frustrating] for the kids. The kids want to move on and go to programs and get the help and do something instead of stay here. It’s a hard situation all the way around.

D. A Major Cause of the Problem Appears to Be the New Mexico Medicaid Program’s Failure to Provide Adequate Mental Health Services

The New Mexico Medicaid program covers 160,000 children and adolescents, including many of the youth who are unnecessarily incarcerated while waiting for mental health treatment. Of eight detention center administrators who provided information about insurance coverage, six said that Medicaid often covered these youth and one said that Medicaid sometimes covered them.⁷ Only one administrator reported that Medicaid did not provide coverage to the detained youth.

Medicaid enrollment is supposed to assure access to mental health care. The Social Security Act requires states to furnish Medicaid-enrolled children and adolescents with all services necessary “to correct or ameliorate defects and physical and mental illnesses.”⁸ The

⁷Six administrators were not able to provide information about insurance coverage.

⁸42 U.S.C. 1396d(r).

Medicaid program in New Mexico, however, is not making necessary treatments available to youth who are incarcerated. As one administrator said:

We definitely need more places to help treat these kids. They need the help, and we seem to be running out of beds. We need to cut back some of the red tape on the Medicaid [program] to get them the treatment that they need. Because jail is not a place for them. We can't treat them here.

The inability of the New Mexico Medicaid program to provide appropriate mental health services to incarcerated youth appears to have its roots in a decision to require all Medicaid patients to enroll in a managed care program called *Salud!*. The *Salud!* program was created in 1997, when the federal government granted New Mexico a “waiver” from traditional Medicaid rules and payment methods.

Since *Salud!* began, New Mexico has experienced a major loss of mental health care services. The lost services include the closure of 54% of the state’s residential treatment beds and 55% of its group home beds, as well as the loss of many outpatient therapists and services.⁹ Reviews of *Salud!* have revealed dramatic decreases in access to home- and community-based services, particularly for children and adolescents, compared to the previous system.¹⁰ According to one study, only 15% to 26% of New Mexico psychiatric patients saw a therapist within one week of hospital discharge, compared to a national average of 45% (and a goal of 100%).¹¹ Part of the problem appears to be excessive overhead and administrative waste under *Salud!*, which resulted in severe cuts in provider payment rates. According to an audit prepared for the Legislative Finance Committee of the New Mexico Legislature last year, *Salud!* spent only 55 cents of every behavioral health dollar for clinical care.¹²

In October 2000, the failures of *Salud!* led the U.S. Department of Health and Human Services (HHS) to revoke New Mexico’s waiver for mental health services. The state was given 90 days to end the responsibility of *Salud!* for mental health care and prepare for the transition to a fee-for-service system.¹³ This was the first time that the federal government had ever withdrawn a waiver because of concerns over the quality of mental health care.

⁹The Consortium, *New Mexico Behavioral Health Service Analysis 2000* (Aug. 17, 2000).

¹⁰Presbyterian Medical Services, *Trends in Community-Based and Day Treatment Services* (Apr. 10, 2000).

¹¹Judge David L. Bazelon Center for Mental Health Law, *Information sheet #3: HEDIS Data and Additional member Survey Data* (2000).

¹²Human Services Department, *Audit of Medicaid Managed Care Program (Salud!) Cost Effectiveness*, (Oct. 27, 2000).

¹³Letter from Medicaid Director Tim Westmoreland to Robert T. Maruca, Director, New Mexico Human Services Department (Oct. 19, 2000).

Ultimately, the termination of *Salud!* did not go into effect. As the deadline approached, New Mexico Governor Gary Johnson asked President Bush to reverse the decision.¹⁴ In February 2001, HHS did reverse its October 2000 decision and allowed *Salud!* to continue to provide mental health services.¹⁵

At the time *Salud!* was reinstated, Governor Johnson declared that the decision would lead to a “high quality of service.”¹⁶ While one detention center administrator did report some new mental health services in 2001,¹⁷ this report found little evidence that the problem of unnecessary incarceration of youth with mental health problems has eased. From July to December 2001, juveniles have spent an estimated 5,600 extra days incarcerated, according to detention center administrators. This is the equivalent of 15.3 years of time.

IV. CONCLUSION

According to administrators of juvenile detention centers in New Mexico, poor access to mental health services has caused hundreds of youth to remain incarcerated for no valid law enforcement purpose. Collectively, New Mexico youth spent an estimated 31.3 unnecessary years in detention centers in 2001. A major cause of this problem appears to be the failing New Mexico Medicaid program.

¹⁴*Reversal Leaves Salud Intact*, The New Mexican (Feb. 17, 2001).

¹⁵Letter from Medicaid Director Mike Fiore to Robert T. Maruca, Director, New Mexico Human Services Department (Feb. 16, 2001).

¹⁶*Reversal Leaves Salud Intact*, The New Mexican (Feb. 17, 2001).

¹⁷The administrator of the Bernalillo County Detention Center reported that it has partnered with the Medicaid program to provide mental health services to high risk youth. See *Program to Aid Juveniles*, Albuquerque Journal (Aug. 25, 2001).